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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

In the Matter of Budget Towing,
Inc.: Petition for Irregular Route
Common Carrier Permit Authority
to Transport Motor Vehicles

In the Matter of the Petition of
Budget Towing, Inc.: Petition for
Contract Carrier Permit Authority
to Serve the City of St. Paul,
County of Ramsey, for the
Transportation of Motor Vehicles

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the State Office of Administrative Hearings on September 16, 1993, in Minneapolis, Minnesota.

Appearances: Paul O. Taylor, Harris and Taylor, Attorneys at Law, 2950 Metro Drive, #301, Minneapolis, Minnesota 55425, appeared on behalf of Budget Towing, Inc. (Budget Towing or Applicant); and Robert D. Gisvold and Mark A. Sunberg, Kalina, Wills, Woods, Gisvold & Clark, Attorneys at Law, Suite 200, 941 Hillwind Road Northeast, Minneapolis, Minnesota 55432-5964, appeared on behalf of Twin Cities Transport & Recovery, Inc. (Twin Cities Transport) and Shorty's Heavy Duty Wrecker Service, Inc. (Shorty's).

The record of the proceeding closed on October 4, 1993, with the receipt by the Administrative Law Judge of a post-hearing memorandum of law.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Tribunal Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered

separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as final Order.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Applicant should be granted Class II-T permit authority to transport motor vehicles, pursuant to Minn. Stat. §§ 221.111(1) and 221.121, subd. 6(c) (1992).

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On December 11, 1992, the Applicant, Budget Towing, Inc. filed with the Minnesota Transportation Regulation Board a Petition for contract carrier permit authority to serve the City of St. Paul, County of Ramsey, for the transportation of motor vehicles, to include automobiles, trucks, buses, motorcycles, boats, tractors, snowmobiles, ambulances, fire engines, police cars and vans. Notice of the Application was published in the Minnesota Transportation Regulation Board bulletin of December 18, 1992, establishing protest deadline of January 7, 1993.

2. Timely Protests were filed by Twin Cities Transport & Recovery, Inc., Shorty's Heavy Duty Wrecker Service, Inc. and Andy's Towing, Inc.

3. On October 12, 1992, the Transportation Regulation Board received Application from Budget Towing, Inc. for irregular route common carrier permit authority to transport motor vehicles, to include automobiles, trucks, buses, motorcycles, boats, tractors, trailers, snowmobiles, ambulances, fire engines, vans and police cars between all points in Minnesota.

4. Notice of the Application was published in the Transportation Regulation Board weekly calendar of October 16, 1992, establishing a protest deadline of November 5, 1992.

5. Timely Protests to the irregular route petition were filed by Twin Cities Transport & Recovery, Inc., Shorty's Heavy Duty Wrecker Service, Inc. and Andy's Towing, Inc.

6. By Order of the Administrative Law Judge, the irregular route application of Budget Towing, Inc. was consolidated for hearing with the contract carrier application of Budget Towing, Inc.

7. The Transportation Regulation Board initially published a notice of hearing in its weekly bulletin of January 8, 1993.

8. With the mutual consent of all parties, a consolidated hearing was rescheduled to be held on September 16 and 17, 1993. Notice of the rescheduled consolidated hearing was published in the weekly calendar of the Transportation Regulation Board up to the day of hearing.

9. At the hearing herein, the contract carrier permit application of Budget Towing, Inc. was withdrawn for all purposes. The Administrative Law Judge instructed the parties that the remainder of the proceeding would concern solely the request for irregular route common carrier permit authority.

10. Although the application was originally filed as an irregular route common carrier permit application, at the hearing herein, all parties stipulated to treating the application as one for a Class II-T permit to transport the motor vehicles listed in the initial application.

11. At the hearing, the parties stipulated to an amendment to the application limiting the authority sought to a Class II-T permit for the transportation of automobiles, trucks and vans only. The Administrative Law Judge instructed the parties that he accepted the amendment as reasonable and as reflecting the outer scope of the evidence presented at the hearing. The Report will, therefore, deal with the application as amended.

12. At the hearing, the Protests of Twin Cities Transport & Recovery, Inc. and Shorty's Heavy Duty Wrecker Service, Inc. were received and each was made an intervenor in the proceeding. The Protest of Andy's Towing, Inc. was withdrawn and that Protestant did not participate in the proceeding.

13. Budget Towing, Inc. of St. Paul is a Minnesota corporation, wholly owned by the president of the corporation, Beverly C. Carlson. Budget leases a heated facility at 846 Earl Street in St. Paul. The Earl Street facility has space for minor vehicle repair work, office functions and a locked impound lot. The company has 15 drivers, three part-time and 12 full-time. All of the drivers have at least four years' experience in towing and have been properly tested for chemical use and appropriate medical condition. When Budget Towing hires a new driver, the applicant is subject to an interview and a driving record and reference check. New drivers are shown books and tapes on safety and receive road instruction from experienced drivers.

14. Budget Towing, Inc. had gross revenues from its towing operations in 1991 of \$600,000-\$700,000. For 1992, its gross revenues will be approximately the same. A balance sheet prepared by the accountant for the corporation shows total assets, including receivables of \$111,657, total liabilities of \$48,800, and a net worth of \$62,844. The fleet owned by the company is, apparently, carried at the net book fixed assets amount of \$51,916.

15. Budget Towing operates 23 tow trucks. App. Ex. 1 shows 19 pieces of equipment. Since the preparation of App. Ex. 1, four additional pieces of equipment have been added to the fleet, including two additional flatbed trucks and two tow trucks. The equipment of Budget Towing that is leased is subject to three-year leases.

16. Budget Towing has a vehicle inspection program and its vehicles receive regular maintenance. Some of its vehicles are also subject to governmental inspections. Sixty percent of Budget's vehicles are diesel and percent are gas operated. All of the Budget Towing's drivers are uniformed neatly groomed.

17. In the past, and up to and including the date of the hearing, Budget Towing, Inc. has held itself out as providing towing of vehicles from private property, including apartment complexes. At the request of the management,

Budget Towing has towed vehicles from the Battle Creek apartment building, the Como Park apartments, the Montreal Court apartments, and a number of other apartment buildings, located primarily on the east side of St. Paul and in Maplewood. Although Budget Towing has known since the fall of 1992 that motor carrier authority was required to transport vehicles that were not disabled, the Budget Towing drivers make no attempt to determine whether the vehicles are inoperable. The manager of the Applicant testified that he believed he was acting within the law as long as he did not know that a particular vehicle was inoperable. He likewise defined "inoperable" as a car that did not have keys available to start the vehicle. Hence, in his mind, an illegally parked vehicle that was locked, but was otherwise operable, could be towed without the transporter having motor carrier authority.

18. Midway Ford is a Ford dealership located in Roseville, Minnesota at Snelling and County Road C. Midway Ford currently uses Budget Towing to do most of its towing, including the towing of wrecked and disabled vehicles. Budget Towing tows approximately 60-65 vehicles that are wrecked or disabled per month for Midway Ford. Midway Ford also has a rental fleet of 70-80 vehicles. On occasions, an operable vehicle is towed out to a customer's location when a wrecked or disabled vehicle is returned to Midway Ford. Approximately six times in the past year, Midway has caused an operable vehicle to be transported to a customer at the scene of a disabled vehicle. Currently, Ford Motor Company has a roadside assistance service that includes Ford trucks. In 1993, the program will expand to all new Ford vehicles. Under the expanded roadside assistance program, a person with a disabled vehicle will call an 800 telephone number for Ford Motor Company. Ford Motor Company will then select a towing company from its list of approved carriers to transport the disabled vehicle to the closest Ford dealership for repair. On occasion, depending upon the anticipated length of the repair and the demands of the customer, an operable vehicle may be towed out to the location of the disabled vehicle for the customer's use. For such calls, however, Ford Motor Company will select the towing company and the disabled vehicle will be towed to the closest Ford dealer. Midway Ford also anticipates that it may receive some direct calls from customers who have purchased new vehicles from Midway Ford. If that occurs, Midway Ford will do everything in its power to satisfy its customer, particularly the purchasers of large, expensive Ford products. A substitute vehicle will only be provided, however, when the repair will take overnight.

19. White Bear Lincoln-Mercury is a Lincoln-Mercury dealer located in White Bear, Minnesota. It has used Budget Towing for all of its towing needs for approximately two and one-half years. Budget was selected after service proposals were received from several towing companies. White Bear Lincoln-Mercury needs a tow company that can respond to a customer request within one hour. It is also important to White Bear Lincoln-Mercury, because of the age and affluence profile of their customers, to have a clean-cut, uniformed driver respond to service calls. Lincoln has had a service program covering Lincoln Town Cars for some period of time. Under this program, on occasion, an

operable vehicle has been taken to a customer's location and a disabled vehicle transported back to White Bear Lincoln-Mercury. The origin point of the operable vehicle has always been the Highway 61 location of White Bear Lincoln-Mercury in Vadnais Heights, when the dealership has been involved, with a typical destination being 15 or 20 miles away. The destination, however, could be virtually anywhere in the State of Minnesota. In the past, White Bear Lincoln-Mercury, on occasion, has used Budget to tow operable

vehicles to customers for rental or substitute transportation. In 1994, it anticipated that the roadside assistance program will be extended to include all Mercury vehicles, including the Grand Marquis and Sable models. Under the program, an individual will call an 800 telephone number where the operator will select a towing company from an approved list. The vehicle will be towed to the nearest Lincoln-Mercury dealer. Depending on the anticipated length of the repair, a substitute vehicle may be provided. It might be provided at the site of the breakdown or at the dealership. White Bear Lincoln-Mercury anticipates that customers who have originally purchased their vehicles from the company will call the company directly for service. If one of their customers calls and demands a substitute vehicle be provided on site, White Bear Lincoln-Mercury will provide that service. The substitute transportation, if provided, may be provided through a towing company or through use of a "runner", if the customer will not ride back with the tow truck. It is anticipated that runners will continue to be used with a degree of frequency because of the increased flexibility and quicker response time.

20. Countryside Volkswagen-Saab is a Volkswagen-Saab dealership located on Highway 36 near Maplewood Mall in St. Paul. It has used Budget Towing Company as its exclusive towing company for the past seven years. Countryside has found Budget's service to be excellent, its equipment well-maintained, and its drivers professional. Saab has a roadside assistance program for disabled vehicles where an 800 telephone number is called and the disabled vehicle is towed to the nearest Saab dealership. An operable vehicle may be provided, depending on the length of time needed for the repair. The operable vehicle might be provided at the site of the disabled vehicle or at the dealership. If an operable vehicle is towed to a customer, the origin point would always be Countryside Volkswagen-Saab for a call to which it is responding and the destination would usually be somewhere in the metropolitan area. A different destination is possible if a customer of Countryside Volkswagen-Saab calls the dealership directly and requests assistance. The towing company for roadside service is selected by Saab, not the dealership or customers. Four times in the last two weeks, Countryside Volkswagen-Saab required an operable vehicle to be delivered. It chose to use runners on all of those occasions. In the past, it has always used runners to transport vehicles because of a quicker response time and more flexibility in providing service. The company would, however, like the availability of Budget Towing to tow operable vehicles if the need arose.

21. Twin Cities Transport & Recovery, Inc. is a full service towing company with irregular route authority to transport a wide range of vehicles, including heavy equipment. Its main offices and secured yard is located at 1396 Concordia Avenue in St. Paul. The company also maintains a facility in downtown St. Paul. The Concordia Avenue facility has a building with four bays, main offices, a fenced yard and approximately two acres of property. The company has 25 employees, including part-time employees. Twelve or 13 of its employees are drivers. The company maintains the equipment stated in Prot.

3, which includes 17 self-propelled tow vehicles and a 1984 air bag trailer moving tipped, loaded semi-trailers. With its equipment, the company can accomplish all moves, including heavy duty tows. Its towing equipment ranges from one ton to heavy duty five ton pieces of equipment. Twin Cities Transport has towing arrangements with automobile dealers, similar to the supporting dealer witnesses. The company is an authorized towing company for various roadside assistance programs for automobile companies. It would tow a loaned or rental unit to the site of a

wrecked or disabled vehicle, if requested to do so. Most often, however, people with disabled vehicles ride back to the dealership in the tow truck. The company has never refused to provide service. In 1992, the company's gross revenues were approximately \$1.2 million. Twin Cities Transport could provide all of the service requested by the three supporting automobile dealer witnesses.

22. Blaine Brothers Towing Company received irregular route authority to transport motor vehicles in 1992. It operates a facility at 3000 - 82nd Street in Blaine, Minnesota. Its facility includes a six bay shop and office area and a small impound lot. When the company learned in July of 1992 that operable vehicles could not be towed without motor carrier authority, it ceased transporting such vehicles until it received the required operating authority. The company operates three trucks and has six drivers providing service. Blaine Brothers Towing Company could provide the service requested by the supporting automobile dealer witnesses.

23. Shorty's Heavy Duty Wrecking Service maintains a facility at 12255 Osborne Road, Spring Lake Park, Minnesota. The company received irregular route authority to transport motor vehicles in 1992. The company employs 49 persons full-time and ten people part-time. Thirty-seven of its employees are drivers. The company operates 19 tow trucks, four of which are flatbeds. Shorty's is capable of towing any motor vehicle. Shorty's routinely provides towing service for automobile dealerships. No automobile dealership has ever asked it to tow an operable vehicle. Shorty's is an authorized service provider for automobile manufacturers' roadside assistance programs and automobile service clubs. Shorty's could provide the service requested by the three supporting automobile dealer witnesses.

24. Since June of 1992, the Transportation Regulation Board has issued motor carrier authority to 35 towing companies in Minnesota. Most such permits have been issued to companies in the seven-county metropolitan area.

Based on the foregoing facts, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the hearing.

2. Proper notice of the hearing was timely given, and all relevant, substantive and procedural requirements of law or rule have been fulfilled, and, therefore, the matter is properly before the Administrative Law Judge.

3. From Applicant's experience, knowledge of the regulations and financial condition, it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

4. Applicant's vehicles are within the safety requirements prescribed by the Department.

5. The Applicant has not established a public need for a grant of additional Class II-T permit authority to transport motor vehicles within the State of Minnesota.

6. The Protestants have established that they and other permitted carriers are fully able to meet the public need for such towing services.

7. Any Conclusion more properly considered a Finding of Fact, and any Finding of Fact more properly considered a Conclusion, is hereby adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based on the foregoing Conclusions, it is the Recommendation of the Administrative Law Judge to the Board that it issue the following:

ORDER

The application of Budget Towing, Inc. of St. Paul for irregular route common carrier permit authority to transport motor vehicles within the State of Minnesota should be considered a petition for Class II-T motor carrier permit authority. When so considered, the application of Budget Towing, Inc. of St. Paul, Minnesota is properly DENIED.

Dated this 15th day of October, 1993.

s/ Bruce D. Campbell
BRUCE D. CAMPBELL
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded; No Transcript Prepared.

MEMORANDUM

All of the parties to this proceeding agree that the application for irregular route common carrier permit authority to transport stated motor vehicles is properly treated as a Class II-T motor carrier permit authority.

request. The request for permit authority made by the Applicant is within Minn. Stat. § 221.121, subd. 1 (1992). As recognized by the Protestants, the applicable test for a grant of additional permit authority was summarized by the court in Five Star Trucking, Inc. v. Minnesota Transportation Regulation Board, 370 N.W.2d 666 (Minn. App. 1985). Under Minn. Stat. § 221.121 (1992) the Applicant must first demonstrate by a preponderance of the evidence that it is fit and able to offer the proposed service, that its vehicles meet the prescribed safety standards, and that there is a public need for the service.

If an applicant can demonstrate those three requirements, the burden shifts to protestants to demonstrate that existing carriers can satisfy the public need established.

The Protestants argue that the Applicant is not fit and able within the meaning of Minn. Rule 7800.0100, subp. 4. The Protestants first argue that the Applicant has not demonstrated its financial status. The Administrative Law Judge accepts the balance sheet provided by the Applicant as demonstrating the requisite financial ability. The president of the corporation testified that the balance sheet was prepared by its accountant and used in the normal course of business for all purposes. The Administrative Law Judge does not consider the inability of the president of the corporation to fully explain the entries on the balance sheet to be fatal to the showing of financial ability reflected in the balance sheet.

The Protestants also argue that past illegal activity by the Applicant towing vehicles from private property renders the Applicant unfit. The testimony of past illegal activity, again, as recognized by Protestants, is whether the Applicant is likely to comply with rules and statutes governing motor carrier operations in the future. Brinks, Inc. v. Public Utilities Commission, 355 N.W.2d 446 (Minn. App. 1984). The Administrative Law Judge believes that the Applicant was under a misapprehension about the requirements of the law with respect to the need for motor carrier authority when transporting locked vehicles that were not otherwise wrecked or disabled. The asserted violation occurred during a period of legal uncertainty. In the opinion of the Administrative Law Judge, they do not evidence a character of mind making it unlikely that the Applicant will comply with applicable motor carrier rules and statutes in the future.

The Administrative Law Judge does find, however, that the Applicant has not demonstrated an appreciable public need for additional motor carrier authority to provide towing service. Three supporting witnesses testified. Virtually without exception, the need which they testified to was extremely sporadic, largely under the control of a central dispatching authority other than the dealership, and highly speculative. Moreover, in the past and probably in the future when such service needs do arise directly from a dealership, they will be met through the use of "runners", rather than a towing service. The Administrative Law Judge is also influenced by the fact that the Board has authorized motor carrier authority for 35 towing companies since July of 1992. For the most part, these towing companies are located in the Twin Cities metropolitan area.

If the Board were to reach a contrary conclusion and determine that the Applicant has established some public need, it is clear that the Protestants and other permitted carriers could fully meet that need. Both Twin Cities Recovery and Shorty's testified that they could fully service any needs that the supporting dealership identified. There is no evidence that the service

provided by either Shorty's or Twin Cities Transport is in any respect deficient. Under such circumstances, and, given the number of motor carriers already authorized to transport vehicles in the Seven-County Metropolitan Area, the Administrative Law Judge believes that the application is properly denied.

B.D.C.